to be an attempt. Each case must be decided on its own facts. In the principal case the court would not have been warranted in reversing the finding of this fact in the court below. *Cf. Bissot* v. *State*, 53 Ind. 408. But *cf. People* v. *Hüter*, *supra*.

INDICTMENT — FINDING — RESUBMISSION. — Though retained by the prosecutor, the acting state attorney had charge of the proceedings in which a grand jury indicted the defendant for murder. On demurrer to a plea in abatement, the court quashed the indictment. Under a competent state attorney, the same grand jury, having heard the same witnesses only, found the same indictment. A demurrer to a plea in abatement was sustained. The defendant was convicted of manslaughter. *Held*, that the judgment be affirmed. *Oglesby* v. *State*, 90 So. 825 (Fla.).

The Florida Constitution guarantees a right to a grand jury in felony cases. See FLA. CONST., ART. I, § 10. Statute and common law determine the content of that right. *English* v. *State*, 31 Fla. 340, 12 So. 689. At common law bias is no ground of objection to a grand juror, who may act on his own or common knowledge. *Regina* v. *Russell*, Car. & M. 247; *Comm.* v. *Woodward*, 157 Mass. 516. See MIKELL, CASES ON CRIMINAL PROCEDURE, 90 n. See also, 4 BLACK. COMM. 300; Sir Frederick Pollock, "The King's Peace in the Middle Ages," 13 HARV. L. REV., 177, 180–181; James B. Thayer, "The Jury and Its Development," 5 HARV. L. REV. 249, 263. *Contra*, *United States* v. *Burr*, Fed. Cas. No. 14,693 (D. Va.). A Florida statute declares the common law rule. See 1920 FLA. REV. GEN. STAT., §§ 5947, 5954. *Peeples* v. *State*, 46 Fla. 101,35 So. 232. At common law, however, private control of a grand jury invalidates its action. *United States* v. *Kilpatrick*, 16 Fed. 765 (W. D. N. C.); *Welch* v. *State*, 68 Miss. 34, 8 So. 673. See Mr. Justice Field, *Charge to Grand Jury*, 2 Saw. 667, 673 (Circ. Ct. D. Cal.). In a doubtful situation this consideration would have great weight. The jury in returning the second indictment cannot have discounted entirely the influences that produced the first. *Cf. State* v. *Osborne*, 61 Ia. 330, 16 N. W. 201; *State* v. *Ivey*, 100 N. C. 539, 5 S. E. 407. Nevertheless, it would seem, under the circumstances, that the court preserved the substantial features of a grand jury indictment. The evidence amply sustained the conviction, and, *a fortiori*, the indictment. No improper conduct on the part of the first attorney was shown aside from his performance without right of the function of a prosecuting attorney. A competent attorney supervised and presumably approved the later proceedings. The lower court seems clearly justified in refusing, in the exercise of its discretion, a new trial.

INJUNCTION — NATURE AND SCOPE OF THE REMEDY — DISCRETION OF THE COURT TO REFUSE RELIEF ON GROUNDS OF CONVENIENCE. — The defendant railroad appealed from a ruling denying its motion for dissolution of an injunction restraining it from appropriating part of a shipper's coal, to keep its trains running during a coal strike. The plaintiff was a coal merchant. The defendant offered to pay him the invoice price of coal at the mines, plus ten per cent, for its appropriation. It was alleged that further appropriations would not be necessary for some months, at least. *Held*, that the appeal be denied. *Mobile & Ohio R. R. Co.* v. *Zimmern*, 89 So. 475, 206 Ala. 37.

For a discussion of the principles involved, see NOTES, *supra*, p. 211.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — DATE OF INCONTESTABILITY CLAUSE. — The insured took out a policy of life insurance with the defendant company. The policy was antedated, in